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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,177	07/23/2003	Georgios Cheliotis	CH920020048US1 (16840)	8250
23389 7590 05/02/2008 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
VIG, NARESH				
ART UNIT		PAPER NUMBER		
3629				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/625,177

Applicant(s)

CHELIOTIS ET AL.

Examiner

NARESH VIG

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 20031024
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This is in reference to communication received 03 April 2008. Claims 30 is pending for examination.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore,

providing a first computing resource for fulfilling the resource contract,

providing a second computing resource capable of providing computing capacity and said second computing resource incapable of being controlled by the guarantor;

utilizing the second computing resource for fulfilling the contract,

monitoring conditions of said second computing resources during a contract fulfillment,

detecting a probability of failing contract fulfillment by determining that the contract is incapable of being fulfilled within the time tolerance; and, in response,

in response to probability of failing contract fulfillment, transferring a remainder of said contract that is not yet fulfilled to the first computing resource

first computing resource for guaranteeing the fulfillment of the resource contract if the resource contract is incapable of being fulfilled utilizing only the second computing resource

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As currently claimed, it is not clear who provides first and

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second computing resources, and, who monitors terms of contract, since both first and second computing resources are not controlled by same entity or resource.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over HP News Release "Compaq Extends Capacity on Demand to ProLiant Server Platform" hereinafter known as HP, in view of Follet article "IBM Tivoli Pushes Business Impact Management"

Regarding claim 30, HP teaches a method for providing a requested computing resource service. HP does not exclusively teach conditions for requested computing resources, However, HP teaches that customers can dial-up or dial-down (i.e. increase or decrease CPU capacity) based on their needs. Follet teaches that IBM Tivoli can automatically monitor the CPU usage, and, allocate or remove resources within the pre-established thresholds (thresholds can be set based on terms of contracts).

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify HP teaching by adopting teaching from Follet article to automate the provisioning of resources in a computing environment, control costs associated with infrastructure implementation, etc.

HP in view of Follet teaches capability for:

providing a requested computing resource service according to terms of a contract;

providing a first computing resource for fulfilling the resource contract, said first computing resource capable of being controlled by a guarantor of said contract to provide a requested computing service (HP, customers are provided with a system);

providing a second computing resource capable of providing computing capacity (HP, customer and increase computing capacity). Eventhough, HP in view of Follet does not explicitly teach using Stochastic process, however, using an existing technology to improve a product is old and known to one of ordinary skill in the art.

utilizing the second computing resource for fulfilling the contract (Tivoli, automatically adding or removing resources to manage resources with demand),

monitoring conditions of said second computing resources during a contract fulfillment (Tivoli, automatically adding or removing resources to manage resources with demand),

detecting a probability of failing contract fulfillment by determining that the contract is incapable of being fulfilled within the time tolerance (Tivoli, monitors the

usage of the server to ensure it does not cross pre-established thresholds); and, in response,

transferring a remainder of said contract that is not yet fulfilled to the first computing resource (an obvious result when added capacity is removed), and

utilizing the first computing resource for guaranteeing the fulfillment of the resource contract if the resource contract is incapable of being fulfilled utilizing only the second computing resource (an obvious function which can be performed when there is only one processor is in use),

wherein said contract guarantor accepts the contract with a guarantee to provide the requested computing resource service with the given conditions.

Claim 30 rejected under 35 U.S.C. 103(a) as being unpatentable over Landherr et al. US Patent 6,880,156.

Regarding claim 30, Landherr teaches providing a requested computing resource service. Even though Landherr does not explicitly teach providing computing resource service according to terms of a contract, however, providing resource to user according to terms of contract is old and known to one of ordinary skill in the art to document Statement of Work, contract deliverable etc. Therefore, Landherr can be used to fulfill contract terms which describe conditions of the requested computing resource service. Landherr teaches capability for:

providing a first computing resource for fulfilling the resource contract, said first computing resource capable of being controlled by a guarantor of said contract to provide a requested computing service (System allocator, application servers) [Landherr, col. 2, lines 32 – 42, Fig. 2 and disclosure associated with Fig. 2];

providing a second computing resource capable of providing computing capacity (Landherr, allocator can activate additional servers) [Landherr, abstract]. Even though, Landherr does explicitly teach using Stochastic process, however, using an existing technology like stochastic programming in situations involving scenarios about the future to improve an existing product is old and known to one of ordinary skill in the art.

Landherr teaches capability for:

utilizing the second computing resource for fulfilling the contract (Each of the computers is capable for hosting a server application, therefore, any of the plurality of Landherr server can be used to fulfill the contract) [Landherr, col. 2, lines 35 – 35]

monitoring conditions of said second computing resources during a contract fulfillment (Landherr teaches monitoring thresholds, i.e. terms of a contract). Therefore, Landherr teaches capability for supporting contracts wherein conditions can include a time tolerance value set to define a time before a time limit for fulfilling the contract, said time tolerance value calculated for guaranteeing enough computing capacity on the first computing resources for fulfilling the contract; and,

detecting a probability of failing contract fulfillment by determining that the contract is incapable of being fulfilled within the time tolerance (Landherr teaches

capability for determining when more resources are needed, i.e. server fulfilling the contract cannot handle the workload of the contract) [Landherr, lines 26 – 28];

transferring a remainder of said contract that is not yet fulfilled to the first computing resource (system allocator), and utilizing the first computing resource (system allocator) for guaranteeing the fulfillment of the resource contract if the resource contract is incapable of being fulfilled utilizing only the second computing resource (system allocator allocates another server),

wherein said contract guarantor accepts the contract with a guarantee to provide the requested computing resource service with the given conditions.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

1. Westfall et al. US Patent 6,449,650
2. Levillain et al. US Publication 2003/0107590
3. Williams US Patent 6,785,889
4. Aziz et al. US Patent 6,597,956
5. Wagner, Server Vendor Lets Customers Pay for Additional CPUs as Needed on New Low-end Systems
6. Bucholtz, Extra CPUs Just a Flick Away

7. Louveaux, A Dual-Based Procedure For Stochastic Facility Location
8. Compaq Powers Access on Demand with New Line of Evo Desktops and Notebooks

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 27, 2008

/Naresh Vig/
Primary Examiner,
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